

EXTRACTS FROM MINUTES OF THE BOARD OF COMMISSIONERS

A regular meeting of the City Council of the City of Durham, North Carolina, was duly held on September 16, 2013 at 7:00 p.m. in the Council Chambers at City Hall, 101 City Hall Plaza, Durham, North Carolina. Mayor William V. Bell presiding.

The following members were present:

The following members were absent:

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Council Member _____ moved that the following resolution, copies of which having been made available to the City Council, be adopted:

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA REQUESTING THE RELEASE OF CERTAIN PREMISES RELATED TO AN INSTALLMENT PURCHASE CONTRACT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A NOTICE OF EXTENSION TO THE DEED OF TRUST RELATED THERETO IN ORDER TO EXTEND THE LIEN TO ADDITIONAL PROPERTY

WHEREAS, the City of Durham, North Carolina (the “City”) is a municipal corporation validly existing under the Constitution, statutes and laws of the State (the “State”);

WHEREAS, the City entered into (a) an Installment Purchase Contract dated as of January 1, 2007 (the “Contract”) with the New Durham Corporation, a North Carolina nonprofit corporation (the “Corporation”), in order to pay the capital costs of, among other things, acquiring, constructing, equipping and installing of performing arts facility (the “DPAC”) and (b) a Deed of Trust and Security Agreement dated as of January 1, 2007 (the “Deed of Trust”) from the City to a deed of trust trustee (the “Deed of Trust Trustee”) placing a lien on the site of the DPAC and improvements thereon (the “Premises”) to secure the City’s obligations under the Contract;

WHEREAS, pursuant to an Indenture of Trust dated as of January 1, 2007 (the “Indenture”) between the Corporation and Deutsche Bank National Trust Company, the successor to which is U.S. Bank National Association, as trustee (the “Trustee”), the Corporation executed and delivered Taxable Certificates of Participation, Series 2007A and Certificates of Participation, Series 2007B, each Evidencing Proportionate Undivided Interests in Rights to Receive Certain Revenues Pursuant to the Contract (collectively, the “2007 Certificates”);

WHEREAS, in connection with the execution and delivery of a Development Agreement to be dated on or about [date] between the City and [Capital Broadcasting Company] (the “Developer”), the City expects (a) to transfer a small portion of the Premises (the “Released Property”) to the Developer and (b) to receive from the Developer certain property rights on the Premises or sufficiently related or appurtenant to the Premises (collectively, the “Additional Property”) that, pursuant to the Deed of Trust, they must be made subject to the lien created thereunder;

WHEREAS, the City staff hereby requests that the City Council approve (a) the execution and delivery of a Deed of Partial Release to be dated on or about [date] pursuant to which the City may release the Released Property from the lien created by the Deed of Trust and (b) the execution and delivery of a Notice of Extension to the Deed of Trust to Additional Property to be dated on or about [date] (the “Notice of Extension”) in order to extend the lien of the Deed of Trust to the Additional Property;

WHEREAS, the insured value of the Premises remaining after the proposed release of the Released Property will be in excess of 100% of the aggregate principal component of the Installment Payments currently outstanding;

WHEREAS, the proposed release of the Released Property will not prohibit ingress, egress and regress to and from the remainder of the Premises not being released or materially interfere with the use of the remainder of the Premises not being released;

WHEREAS, copies of the forms of the Notice of Extension and the Deed of Partial Release (collectively, the “Recording Document”) have been made available to the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Request for Release of Premises. That the City hereby requests, in accordance with Section 1.14 of the Deed of Trust, that the Deed of Trust Trustee release from the Deed of Trust that portion of the site of the DPAC attached hereto as Exhibit A (which shall be contained in the Deed of Partial Release) and that the City agrees to pay all expenses associated with the completion of such release.

Section 2. Consent of the Beneficiary. That the City requests, in accordance with Section 1.14 of the Deed of Trust, that the Trustee, as the assignee of the beneficiary under the Deed of Trust, (a) consent to the release from the Deed of Trust that portion of the site of the DPAC attached hereto as Exhibit A and execute and deliver the Deed of Partial Release and (b) execute and deliver the Notice of Extension, which memorializes the extension of the lien of the Deed of Trust to the Additional Property, as described therein.

Section 3. Authority to Execute and Deliver the Recording Documents. That the forms and content of the Recording Documents shall be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor, the City Manager and the City Clerk and their respective designees shall be and they hereby are authorized, empowered and directed to execute and deliver the Recording Documents, including necessary counterparts, in substantially the forms and content presented to the City Council, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the forms and content of the Recording Documents presented to the City Council, and that from and after the execution and delivery thereof, the City Manager, the Finance Director and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions thereof as executed.

Section 4. Actions by the City. That the Mayor, the City Clerk, the City Manager, the City Finance Director, the City Attorney and their respective designees, are hereby designated to act on behalf of the City to effectuate the release of the Released Property and the extension of the Deed of Trust to the Additional Property, all as described in this Resolution, and all actions of such officers on behalf of the City with respect to such actions, whether previously or hereinafter taken, are hereby approved, ratified and authorized.

Section 5. Severability. That if any section, phrase or provision of this Resolution shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Repealer. That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 7. Effective Date. That this Resolution shall become effective on the date of its adoption.

EXHIBIT A

Released Property

[to come]

Additional Property

[to come]

STATE OF NORTH CAROLINA)
)
CITY OF DURHAM) SS:

I, D. ANN GRAY, City Clerk of the City of Durham, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA REQUESTING THE RELEASE OF CERTAIN PREMISES RELATED TO AN INSTALLMENT PURCHASE CONTRACT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A NOTICE OF EXTENSION TO THE DEED OF TRUST RELATED THERETO IN ORDER TO EXTEND THE LIEN TO ADDITIONAL PROPERTY**” adopted by the City Council of the City of Durham, North Carolina at a meeting held on the 16th day of September, 2013.

D. Ann Gray
City Clerk of the
City of Durham, North Carolina